IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 258 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIPROBHAI KASHINATH GOD - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1, MS REKHA H KAPADIA for Appellant(s) : 1,
MR KP RAVAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgment and order dated 28.12.1998 passed by the learned Addl. Sessions Judge, Surat in Sessions Case No. 10 of 1998 whereby, the appellant – accused was convicted for the offences punishable u/s. 302 & 324 read with Section 34 of the Indian Penal Code (for short, "the I.P.C.") and Section 135 of the Bombay Police Act (for short, "the B.P. Act"). For conviction u/s. 302 of the I.P.C., the appellant was sentenced to undergo imprisonment for life with fine of Rs.1000/- and in default of payment of fine, simple imprisonment for a further period of one month, while for conviction u/s. 324 of the I.P.C., the appellant was sentenced to undergo rigorous imprisonment for a period of two years with fine of Rs.500/- and in default of payment of fine, simple imprisonment for a further period of fifteen days. For conviction u/s. 135 of the B.P. Act, the appellant was sentenced to undergo rigorous imprisonment for a period of four months with fine of Rs.200/- and in default of payment of fine, simple imprisonment for a further period of eight days. All the

sentences were ordered to run concurrently.

2.0 The brief facts of the prosecution case are as under;

2.1 On 06.08.1997, at around 2100 hrs., a quarrel took place between one Dhansukhbhai Fakirbhai Rathod and the appellant herein on the aspect of vacating the premises of said Dhansukhbhai Rathod wherein the appellant was residing as a tenant. The said quarrel was ultimately settled by the intervention of the neighbours – Chanabhai Saburbhai Rathod and Bhikhubhai Bhagubhai Rathod.

2.2 On 07.08.1997, at around 0800 hrs., the appellant along with two other persons, came to the house of said Dhansukhbhai Rathod and threatened of dire consequences and informed that they would return in the evening. At around 2100 hrs., while Bhikhubhai Bhagubhai Rathod, his wife – Sumitraben and Chanabhai Saburbhai Rathod as well as some children from the locality were watching Television, the appellant and two other persons came to the house of Bhikhubhai and asked

him to come out of the house. On hearing the call, Bhikhubhai, his wife – Sumitraben and Chanabhai Saburbhai Rathod came out of the house.

2.3 Thereafter, the appellant asked Bhikhubhai as to who had inflicted blows on him yesterday. When Bhikhubhai showed his unawareness to the question put by the appellant, the appellant inflicted knife blows on the body of Bhikhubhai. At that time, Chanabhai Saburbhai Rathod and Sumitraben tried to rescue Bhikhubhai but, the appellant and said two other persons also inflicted knife blows on both Chanabhai Saburbhai Rathod and Sumitraben. Thereafter, the said three persons fled the scene of offence and a crowd gathered at the place of incident. The injured persons were taken to Civil Hospital, Surat for necessary treatment.

2.4 However, on examination, Bhikhubhai was declared 'dead' while the two other persons, viz. Sumitraben and Chanabhai Saburbhai Rathod were given necessary medical treatment. The Medical Officer who was on duty at the relevant point of time telephonically

informed about the said incident to Umra Police Station. On receipt of the said information, necessary entry was made by the P.S.O. in the Station Diary vide Entry No. 301 of 1997 and a 'yaadi' was given to P.S.I. - one Mr. M. M. Patel for carrying out necessary investigation. The said P.S.I. went to the Civil Hospital and made necessary inquiry. A complaint with respect to the aforesaid incident came to be filed against the appellant on the same day, which was registered as I – C. R. No. 327 of 1997 with Umra Police Station for offences punishable u/s. 302 & 324 r/w. Section 34 of I.P.C. and Section 135 of the B.P. Act.

2.5 Necessary preliminary investigation was carried out. The Investigating Officer went to the scene of offence and performed inquest '*panchnama*'. '*Marnottar*' form was filled up and necessary arrangement was made for sending the dead body for performing post-mortem. The clothes on the body of the deceased were also seized by way of a separate '*panchnama*'. In the meanwhile, the Investigating Officer carried out '*panchnama*' of the scene of offence and collected necessary '*muddamal*' articles.

Thereafter, the '*muddamal*' articles so collected were sent to F.S.L. for examination. On receipt of the F.S.L. Report, PM note and other Reports, they were kept in the investigation file.

2.6 Further investigation was carried out and statements of several witnesses were recorded. As cogent evidence was found against the appellant, he was arrested. Arrest '*panchnama*' was prepared in the presence of '*panchas*'. During the course of interrogation, as the appellant showed willingness to produce the '*muddamal*' weapon used in the commission of the alleged offence in question, the same was recovered by way of a separate '*panchnama*' in the presence of '*panchas*'.

2.7 On completion of investigation, charge-sheet was filed against the appellant in the Court of learned Judicial Magistrate First Class, Surat. As the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, Surat committed the case to the District & Sessions Court, Surat and the same was numbered as Sessions Case No.10 of 1998. The matter

was then transferred to the learned Addl. Sessions Judge for disposal on merits. On production of the accused person, the learned Addl. Sessions Judge framed the charge and as the appellant pleaded not guilty to the said charges, trial was conducted against him.

3.0 The prove the guilt against the appellant, the prosecution had examined in all twenty witnesses namely, PW – 1 Chanabhai Saburbhai Rathod at Exhibit – 10, PW – 2 Sumitraben Bhikhubhai at Exhibit – 12, PW – 3 Dhansukhbhai Mohanbhai Rathod at Exhibit – 13, PW – 4 Ushaben Dhansukhbhai at Exhibit – 14, PW – 5 Arvindbhai Premjibhai at Exhibit – 15, PW – 6 Ashwinbhai Premjibhai at Exhibit – 18, PW – 7 Ajithbhai Nanubhai at Exhibit – 19, PW – 8 Ranchhodbhai Nathubhai at Exhibit – 21, PW – 9 Shailesh Brijmohan Sharma at Exhibit – 22, PW – 10 Dhansukhbhai Fakirbhai at Exhibit – 23, PW – 11 Rameshbhai Saburbhai at Exhibit – 24, PW – 12 Dr. Mahmad Kureshi at Exhibit – 27, PW – 13 Akshaysinh Balvantsinh Rathod at Exhibit – 30, PW – 14 Sureshbhai Chunilal Patel at Exhibit – 32, PW – 15 Dr. Gaurangbhai Solanki at Exhibit – 33, PW – 16 Sharadchandra

Govindram at Exhibit – 35, PW – 17 Dr. Digvijaysinh Harbhanjansinh at Exhibit – 41, PW – 18 Raju Sriram Gupta at Exhibit – 43, PW – 19 Maganbhai Hargovindbhai Patel at Exhibit – 44 and PW – 20 Nazir Ahmadkhan Nasibkhan Pathan at Exhibit – 46.

3.1 The prosecution had also relied upon several documentary evidence, more particularly, the evidence in the form of complaint at Exhibit – 11, the PM note at Exhibit – 28, the Inquest '*panchnama*' at Exhibit – 8, the arrest '*panchnama*' at Exhibit – 38, the discovery '*panchnama*' at Exhibit – 50, the F.S.L. Report at Exhibit – 52 and the Medical Certificates of the injured persons at Exhibits 34 & 55.

3.2 On submission of the closing ‘purshis’, the further statement of the appellant was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge passed the impugned judgment and order convicting the appellant and imposing sentence as stated in the earlier part of this judgment. Hence, the

present appeal.

4.0 Ms. Rekha H. Kapadia learned Advocate for the appellant has submitted that the case of the prosecution mainly rests upon the evidence of PW – 1 Chanabhai Saburbhai Rathod at Exhibit – 10 and PW – 2 Sumitraben Bhikhubhai Rathod at Exhibit – 12. She has submitted that the evidence led by them are not found to be reliable and trustworthy since there are several contradictions in it. Apart from that since the incident in question took place during night hours, it is highly improbable that these witnesses could identify the appellant at the relevant point of time without any doubt. Hence, the appellant deserves to be acquitted by granting him the benefit of doubt.

4.1 Learned Advocate has further submitted that the other documentary evidence on record viz. the discovery '*panchnama*' does not support the case of the prosecution. Thus, in the absence of cogent evidence against the appellant, the appellant could not be held guilty for the alleged offence in question. Hence, the

impugned judgment passed by the Court below deserves to be quashed and set aside and the appellant is required to be acquitted forthwith.

5.0 Mr. H. L. Jani learned APP has submitted that the evidence led by PW – 1 Chanabhai Saburbhai Rathod at Exhibit – 10 and PW – 2 Sumitraben Bhikhubhai at Exhibit – 12 clearly establishes that both these witnesses are eye-witnesses to the incident in question. He has submitted that the presence of both these witnesses at the relevant point of time was a natural one and that since both these witnesses and the appellant were known to each other, there shall not be any question of mis-identification also. Thus, the prosecution has been able to prove beyond doubt the guilt of the appellant.

5.1 Learned APP has further submitted that the documentary evidence on record in the form of the PM note at Exhibit – 28, the Inquest '*panchnama*' at Exhibit – 8, the arrest '*panchnama*' at Exhibit – 38, the discovery '*panchnama*' at Exhibit – 50, the F.S.L. Report at Exhibit – 52 and the Medical Certificates of the injured persons at

Exhibits 34 & 55 respectively clearly prove the guilt of the appellant. He has, therefore, submitted that no interference is required from this Court in this appeal.

6.0 Heard learned counsel for the respective parties. Having perused the entire oral as well as documentary evidence available on record, it appears that the case of the prosecution mainly relies upon the oral evidence of PW – 1 Chanabhai Saburbhai Rathod at Exhibit – 10 and PW – 2 Sumitraben Bhikhubhai at Exhibit – 12, apart from the documentary evidence. We shall carefully scrutinize the evidence led by the said two witnesses in order to ascertain as to whether their evidence could be relied upon for recording conviction or not ?

7.0 The wife of the deceased person – Sumitraben Bhikhubhai Rathod has been examined as PW – 2 at Exhibit – 12. In her deposition, PW – 2 has stated that on the date of the incident, in the morning, a quarrel had taken place between the brother of the appellant and Dhansukhbhai Mohanbhai Rathod (PW – 3 at Exhibit – 13)

on the aspect of vacating the premises of said Dhansukhbhai Mohanbhai Rathod wherein, the appellant was residing as a tenant. The said quarrel was ultimately settled by the intervention of her husband – deceased Bhikhubhai. Thereafter, the appellant and his brother threatened said Dhansukhbhai Rathod of dire consequences and informed him that they would return in the evening. PW – 2 has further deposed that at around 2130 hrs., while she, her deceased husband and the complainant were watching Television in their house, at that time, the appellant, along with his brother and one unknown person, came and asked the deceased to come out of the house. When the deceased went out of the house, the appellant and the two other persons, inflicted knife blows on the stomach, chest and abdomen portion of the body of the deceased. On noticing the same, she and the complainant tried to rescue the deceased from further assaults. However, at that time, the appellant and said two other persons also inflicted knife blows on her as well as on the complainant. Thereafter, the appellant and said two other persons fled the place of incident.

7.1 This witness has been cross-examined before the Court below. However, nothing incriminating has come out from her cross-examination which may lead us to believe her evidence to be untrue or unreliable.

8.0 PW – 1 Chanabhai Saburbhai Rathod at Exhibit – 10 is the relative of the deceased person and also the complainant in this case. This witness has narrated the same facts, as has been narrated by the wife of the deceased Sumitraben Bhikhubhai as PW – 2 at Exhibit – 12. There are certain minor contradictions in the evidence of this witness but, on material point, the evidence of this witness fully supports the evidence of PW – 2 Sumitraben Bhikhubhai. The complaint at Exhibit – 11 also supports the say of this witness *in toto*. Nothing incriminating has come out from his cross-examination which may lead us to believe his evidence to be untrue or unreliable.

9.0 Thus, from the deposition of the aforesaid two witnesses, viz. PW – 1 Chanabhai Saburbhai Rathod at Exhibit – 10 and PW – 2 Sumitraben Bhikhubhai at Exhibit – 12, it can be seen that the evidence led by both of them

fully support each other on material aspects, viz. about the quarrel that had taken place with PW – 3 on the aspect of vacating the premises of PW – 3 which was subsequently settled by the intervention of deceased – Bhikhubhai ; and, also about the narration of the entire incident that took place while these two witnesses and the deceased were watching Television in the house of the deceased. Thus, on material aspects, the evidence led by both these witnesses support each other. Hence, it could be concluded that both these witnesses are eye-witnesses to the incident in question. The presence of PW – 2 Sumitraben Bhikhubhai, at the relevant point of time, was a natural one since she is the wife of the deceased and also since it was night-time. The presence of PW – 1 Chanabhai Saburbhai Rathod also could be said to be natural one since he was a relative of the deceased and was also their neighbour. Moreover, no question of mis-identification shall also arise since both the appellant and these two witnesses were known to each other more particularly, when only a day prior to the date of incident a quarrel had taken place between the appellant and PW – 3 which was settled by the intervention of the deceased.

Thus, we find the evidence of these two witnesses to be reliable and trustworthy.

10.0 It is a matter of record that both these witnesses, viz. PW – 1 Chanabhai Saburbhai Rathod and PW – 2 Sumitraben Bhikhubhai had also suffered serious bodily injuries as a result of the assault of the appellant and the two other persons, which is clear from the Injury Certificates issued to them at Exhibits – 34 and 55 respectively. The said fact is also supported by the oral evidence of the two Medical Officers who had examined the aforesaid two witnesses at the relevant point of time, viz. PW – 15 Dr. Gaurang Somabhai Solanki at Exhibit – 33 and PW – 17 Digvijaysinh Harbhanjsinh at Exhibit – 41. Hence, it is evident that the aforesaid two witnesses viz. PW – 1 Chanabhai Saburbhai Rathod and PW – 2 Sumitraben Bhikhubhai had sustained the injuries in question on account of the knife blows given by the appellant meaning thereby, that it was the appellant who had inflicted the said injuries to them.

11.0 The evidence led by these two witnesses, viz.

PW – 1 Chanabhai Saburbhai Rathod and PW – 2 Sumitraben Bhikhubhai, also show the existence of motive behind the commission of the offence in question. Both these witnesses have specifically deposed about the quarrel that had taken place on the day prior to the date of the incident in question on the aspect of vacating the premises of PW – 3 and that at that time the said quarrel was settled when the deceased had interfered in it. It has also come on record that on the date of the incident, in the morning, the appellant along with two other persons, had come to the house of PW – 3 Dhansukhbhai Mohanbhai Rathod and threatened him of dire consequences and informed that they would come in the evening again. Thus, there was vengeance in the mind of the appellant for deceased – Bhikhubhai for the role that the deceased had played in the quarrel that took place between him and PW – 3. Thus, the existence of motive behind the offence in question is also established beyond doubt.

12.0 It is a matter of record that the '*muddamal*' weapon – knife used in the commission of the offence in

question was produced by the appellant himself, which was recovered by way of discovery '*panchnama*' at Exhibit – 50. Evidently, the '*panch*' witnesses have not supported the case of the prosecution. However, simply on that ground, we cannot completely ignore the discovery '*panchnama*' at Exhibit – 50, more particularly, when the fact remains that the '*muddamal*' weapon was recovered at the instance of the appellant himself and the same gets support from the evidence of the Investigating Officer - Nazir Ahmedkhan Nasibkhan Pathan who has deposed as PW – 20 at Exhibit – 46. Thus, we are of the opinion that though the '*panch*' witnesses have not supported the case of the prosecution, the same shall not be of any help to the appellant.

12.0 The prosecution case also gets support from the documentary evidence in the form of the PM note of the deceased at Exhibit – 28 and the oral evidence of the Doctor (PW – 12 Dr. Mahmad Iqbal Husain Kureshi at Exhibit – 27) who has performed the Post-mortem of the deceased. The PM note of the deceased as well as the oral evidence led by the Medical Officer clearly prove that

the injuries sustained by the deceased were possible by a “sharp-edged weapon” and that the injuries were anti-mortem. The F.S.L. Report at Exhibit – 52 and the Serological Report at Exhibit – 53 also point towards the guilt of the appellant. So far as the aspect of homicidal death is concerned, the same was not disputed before the Court below and also before this Court. Therefore, we are not entering into the said aspect of the matter in detail and, accordingly, hold that the deceased died a homicidal death.

13.0 In view of the above discussion, we have no hesitation in holding that this is a case wherein the motive and the role played by the appellant has been proved by the prosecution beyond doubt. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below in the impugned judgment and order and, therefore, find no reasons to interfere with the same. Hence, the appeal deserves to be dismissed.

14.0 In the result, the appeal is dismissed. Office is

directed to sent the Records & Proceedings to the trial Court concerned forthwith.

[R. P. Dholakia, J.] [K. S. Jhaveri, J.]

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